

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: ETHICON, INC.,
PEVLIC REPAIR SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL No. 2327

JUDGE GOODWIN

This Document Relates to all Cases

**APPLICATION FOR APPOINTMENT TO SERVE ON PLAINTIFF'S STEERING
COMMITTEE**

E. Powell Miller respectfully files this Application in support of appointment of my colleague and co-counsel Alyson Oliver of the Oliver Law Group to the Plaintiff's Steering Committee ("PSC"). I am co-counsel in *Laswell v. American Medical Systems, et al* (S.D.W.V. Docket No 2:12-cv-00425), and Plaintiffs in each of the other consolidated matters, and intend on serving as Ms. Oliver's co-counsel in the many cases that will be filed by Oliver Law Group in this Court.

I have served for the last several years as a Co-Chair of the American Bar Association MDL and Class Procedures Subcommittee. I have extensive experience in complex litigation, and am currently serving as lead or co-lead in: In re AIG 2008 Securities Litigation (United States District Court, Southern District of New York) (Case No. 08-cv-04772) (Co-Lead); Holder et. al. v. Enbridge et. al. (United States District Court, Western District of Michigan) (Case No. 10-cv-751) (Interim Co-Lead); In re Refrigerant Compressors Antitrust Litigation (United States District Court, Eastern District of Michigan) (Case No. 09-md-02042) (Interim Co-Lead); In Re Onstar Contract Litigation (United States District Court, Eastern District of Michigan (Case No. 07-1867) (Interim Co-Lead); In Re Caraco Pharmaceutical Laboratories, Ltd. Securities Litigation (United States District Court, Eastern District of Michigan) (Case No.

2:09-cv-12830) (Co-Lead Counsel); The Board of Trustees of the City of Birmingham Employees et. al. v. Comerica Bank et. al.(United States District Court, Eastern District of Michigan) (Case No. 2:09-13201) (Co-Lead Counsel). My resume is attached as Exhibit 1.

I have reviewed the Proposed Counsel Structure Plan filed with the Court for MDL 2325, 2326, and 2327 on March 19, 2012, and join in the recommendation to the Court that the plan be accepted with one alteration: the inclusion of Ms. Oliver in the PSC. Given the proposed inclusion of several attorneys from the same firms there should certainly be room for Ms. Oliver. Ms. Oliver has acquired extraordinary knowledge in transvaginal mesh products as she currently represents several hundred clients in this area and has lectured on this topic. I was so impressed with Ms. Oliver, and more specifically her knowledge and expertise in matters that involve transvaginal mesh products, that I invited her and her attorneys to move into my office building in order to facilitate working closely with her on these cases. I have worked with Ms. Oliver on several matters involving complex litigation and she has the knowledge, expertise and talent to serve the Steering Committee with distinction.

Respectfully submitted,

/s/ E. Powell Miller
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Dated: March 30, 2012

CERIFICATE OF SERVICE

I hereby certify that on March 30, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record registered for electronic filing.

Respectfully submitted,

/s/ E. Powell Miller

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EXHIBIT 1

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I. SCHOLASTIC RECORD AND AWARDS

- Graduated third in the class from Wayne State University, *magna cum laude*, in 1986. He was an Editor of the Wayne Law Review.
- Joined the Detroit law firm of Honigman Miller Schwartz and Cohn; elected partner in 1990.
- Named, by *Crain's Detroit Business*, "40 Under 40" as one of the most dynamic trial attorneys under the age of 40 in 1993.
- Recognized as a top debater in the United States after having won first place at the Harvard University National Debate Tournament as a freshman at Georgetown University.
- Represented Georgetown University in a special international debating exhibition against the Oxford Debating Union of Great Britain.

II. PEER AWARDS

- Sole recipient Bet-The-Company Litigation Detroit Area *Best Lawyers of America* 2010.
- Top 10 lawyers in Michigan 2009 and 2010 by SuperLawyers Magazine.
- Top 100 lawyers in Michigan in 2006, 2007 and 2008 by SuperLawyers Magazine.

III. COMMUNITY, TEACHING, AND BAR ACTIVITY

- Co-Chair of the American Bar Association procedures sub-committee on class actions and multi-district litigations.
- Executive Committee for the Wayne State University Law School Board of Visitors.
- Board member National Urban Debate League – Detroit Chapter.
- Oakland County Bar Foundation Fellow
- Served as an Adjunct Professor of law at the University of Detroit Mercy School of Law.

- Annual Guest Lecturer University of Michigan School of Law in a Securities Fraud Seminar taught by Cyril Moscow.

IV. SUMMARY OF TRIAL EXPERIENCE

Mr. Miller focuses his practice on all aspects of litigation. He has never lost a trial -- with eleven consecutive victories, including three verdicts in excess of \$5 million and one for \$23.4 million. This last verdict was featured as one of the outstanding verdicts obtained in 1993, in the National Law Journal. Representing defendants at trials, he has a perfect record, never having had a judgment entered against any of his clients.

A. SUMMARY OF ALL TRIAL RESULTS WHERE MILLER WAS LEAD OR SECOND CHAIR FOR DEFENDANT

Doe v. Doe

United States District Court for the Eastern District of Michigan

Nature: Defense of injunction action to enforce covenant-not-to-compete.

Result: District Court reversed Temporary Restraining Order after full evidentiary hearing and client was permitted to return to work despite published opinion in prior case upholding enforceability of the same covenant-not-to-compete at issue in this case. Entire case settled within days after the result. The names are not identified because opponent insisted upon a confidentiality agreement.

Paul and Barbara Sullivan v. Pulte Home Corporation;

Oakland County Circuit Court

Nature: Defense of products liability/breach of warranty suit alleging that home was negligently constructed on fill dirt.

Result: No cause after two week trial and 20 minutes of deliberations in the face of \$60,000 adverse mediation evaluation and \$250,000 settlement demand.

California First Bank v. Frederick Matthei;

Oakland County Circuit Court

Nature: Defense of suit on promissory note.

Result: No cause after three day trial in the face of \$637,500 adverse mediation evaluation.

Total awards against clients: \$0.

B. SUMMARY OF ALL TRIAL RESULTS WHERE MILLER WAS LEAD OR SECOND CHAIR FOR PLAINTIFF

Johnson Controls, Inc. v. Fisher Dynamics

Macomb County Circuit Court

Nature: Commercial dispute regarding steel surcharges.

Result: \$4,054,696.13 award after full bench trial – featured in *Crain's Detroit Business* as a top trial award.

Emily Head v. Navnitlal Patel, M.D.

Monroe County Circuit Court

Nature: Professional negligence claim against psychiatrist who failed to hospitalize patient who raped client.

Result: \$500,000 jury verdict featured in the *Detroit Free Press*; Defendant's highest settlement offer was \$50,000; mediation was \$100,000. In addition, obtained for client settlement from other Defendants involved in the treatment of the mental patient. The terms of the settlement are confidential.

O'Desky, et al. v. Michigan Health Care Corporation;

Wayne County Circuit Court

Nature: Breach of contract action for non-payment of bonuses.

Result: \$629,846 judgment, after bench trial, plus declaratory relief as to future bonuses; trial spanned over four months; Defendant's highest settlement offer was \$40,000.

Pulte Home Corporation v. Hoover Treated Wood Products, Inc., et al.;

United States District Court for the Middle District of Florida

Nature: Products liability suit against manufacturer of defective roof sheathing.

Result: \$23,363,980 jury verdict, including awards for fraud and punitive damages, after four years of discovery and four week trial. Featured in the *National Law Journal* as a top verdict in the nation.

Woodland Medical Group v. Aetna Casualty & Insurance Company;

Wayne County Circuit Court

Nature: Breach of contract suit against insurance company.

Result: \$296,000 jury verdict after 25 minutes of deliberations. Mediation sanctions and interest in excess of \$50,000. Defendant offered zero to settle.

Pulte Home Corporation v. Osmose Wood Preserving, Inc.;

United States District Court for the Middle District of Florida

Nature: Products liability suit against manufacturer of defective roof sheathing.

Result: \$6,250,000 jury verdict, including awards for fraud and punitive damages,

after three years of discovery and two week trial.

Advance Construction Company v. Wayne By-Products Company;
Wayne County Circuit Court

Nature: Negligence suit against contractor for defective construction, causing business interruption.

Result: \$227,930 jury verdict, plus mediation sanctions, for a total recovery of \$338,000, after one week trial and two hours of deliberations. Opponent offered zero to settle.

McLouth Steel Products Corporation v. Ralph Rokeby-Johnson;
United States District Court for the Eastern District of Michigan
(Hon. Bernard Friedman)

Nature: Breach of contract suit against insurance company.

Result: \$10,216,005 jury verdict after three week trial.

In Re: The Estate of Abraham Michael;
Macomb County Circuit Court

Nature: Will contest litigation on behalf of grandchildren.

Result: Settlement after two week trial for more than demand made before trial, including grandchildren's full shares of estate and partial recovery of attorneys' fees.

Total of awards in favor of clients: \$40,983,758.

II. HIGHLIGHTS OF CLASS ACTION EXPERIENCE

Epstein, et al v. Heartland Industrial Partners, L.P., et al
(United States District Court, Eastern District of Michigan)
(Case No. 2:06-CV-13555)

Result: \$12,262,500 Settlement

Egleston v. Heartland Industrial Partners, LP
(United States District Court, Eastern District of Michigan)
(Case No. 06-13555-GER) (Substantial role)

Result: \$12,200,000 settlement

In re Kinder Morgan, Inc. Shareholder Litigation

(District Court of Shawnee County, KA)
(Case No. 06-C-801) (Interim Counsel for Lead Plaintiff)

Result: \$200,000,000 settlement

In Re Proquest Company Securities Litigation

(United States District Court, Eastern District of Michigan)
(Case No. 4:06-CV-11579) (Substantial role; argued Motion to Dismiss)

Result: \$20,000,000 settlement

In Re Collins & Aikman Corporation Securities Litigation

(United States District Court, Eastern District Michigan)
(Case No. 03-CV-71173) (Substantial role)

Result: \$ 10,800,000 settlement

In re IT Group Securities Litigation

(United States District Court, Western District of Pennsylvania)
(Civil Action No. 03-288) (Co-Lead)

Result: \$3,400,000 settlement

In Re General Motors Corporation Securities and Derivative Litigation

(United States District Court, Eastern District of Michigan)
(Master Case No. 06-MD-1749) (Co-Lead)

Status: Obtained major corporate governance reforms to address accounting deficiencies

In re Mercury Interactive Securities Litigation

(United States District Court, Northern District of California)
(Civil Action No. 03:05-CV-3395-JF) (Substantial role)

Result: \$117,000,000 settlement

Wong v T-Mobile USA, Inc.

(United States District Court, Eastern District of Michigan)
(Case No. 05-CV-73922) (Co-Lead)

Result: Settlement for 100% of damages.

In re CMS Energy Corporation Securities Litigation

(United States District Court, Eastern District Michigan)

(Master File No. 2:02 CV 72004) (Substantial role)

Result: \$200,000,000 settlement

In re Comerica Securities Fraud Litigation

(United States District Court, Eastern District of Michigan)

(Case No. 2:02-CV-60233) (Substantial role)

Result: \$21,000,000, divided between related cases at \$15,000,000 and \$6,000,000

Street v Siemens

(Philadelphia State Court)

(Case No. 03-885) (Co-Lead)

Result: \$14,400,000, including 100% recovery for more than 1,000 workers wrongfully deprived of pay.

Redmer v Tournament Players Club of Michigan

(Wayne County Circuit Court) (Case No. 02-224481-CK) (Co-Lead)

Result: \$3,100,000 settlement

Passucci v Airtouch Communications, Inc.

(Wayne County Circuit Court) (Case No. 01-131048-CP) (Co-Lead)

Result: Airtouch agreed to give free phone cards up to two hours in length to more than 2 million Michigan customers and to allow customers who have contracts providing for 8.2 cent land charge to break the contract without penalty and to switch to a new plan without the charge. Estimated value of settlement: \$30,900,000 to \$40,300,000.

Johnson v National Western Life Insurance

(Oakland County Circuit Court)

(Case No. 01-032012-CP) (Substantial role)

Result: \$10,700,000 settlement on behalf of nation-wide class of purchasers of annuities.

Felts v Starlight

(United States District Court, Eastern District Michigan)
(Case No. 01-71539) (Co-Lead)

Result: Starlight agrees to stop selling ephedrine as an ingredient in its weight loss dietary supplement product.

In re Lason Securities Litigation

(United States District Court, Eastern District Michigan)
(Case No. 99-CV-76079) (Co-Lead)

Result: \$12,680,000 settlement

Mario Gasperoni, et al v Metabolife International, Inc.

(United States District Court, Eastern District Michigan)
(Case No. 00-71255) (Co-Lead)

Result: Nationwide settlement approved mandating changes in advertising and labeling on millions of bottles of dietary supplement, plus approximately \$8,500,000 in benefits, including at least \$4,900,000 in research grants.

Pop v Art Van Furniture and Alexander Hamilton Insurance Company

(Wayne County Circuit Court)(Case No. 97-722003-CP) (Co-Lead)

Result: Changes in sales practices and \$9,000,000 in merchandise.

Schroff v Bombardier

(United States District Court, Eastern District Michigan)
(Case No. 99-70327) (Co-Lead)

Result: Recall of more than 20,000 defective Seadoos throughout North America; repair of defect to reduce water ingestion problem; extended warranties; and approximately \$4,000,000 in merchandise.

In re National Techteam Securities Litigation

(United States District Court, Eastern District Michigan)
(Master File No. 97-74587) (Substantial role)

Result: \$11,000,000 settlement

In Re F&M Distributors, Inc., Securities Litigation

(United States District Court, Eastern District Michigan)
(Case No. 95-CV-71778-DT) (Minor role)

Result: \$20,000,000 settlement

In Re Michigan National Corporation Securities Litigation

(United States District Court, Eastern District Michigan)

(Case No 95 CV 70647 DT) (Substantial role)

Result: \$13,300,000 settlement

In re Intel Pentium Processor Litigation

(Superior Court, Santa Clara County, California)(Master File No. 745729)

(Substantial role)

Result: Intel agreed to replace millions of defective Pentium chips on demand without any cost to consumers.